

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:11-cv-205-RJC-DCK

HILDA SOLIS, Secretary of Labor,)	
United States Department of Labor,)	
)	
Plaintiff,)	<u>CONSENT JUDGMENT</u>
)	<u>AND ORDER</u>
v.)	
)	
TONY CHANEY, SR., DIVERSIFIED)	
PRINTING TECHNIQUES, INC., and)	
DIVERSIFIED PRINTING)	
TECHNIQUES, INC. PROFIT)	
SHARING PLAN,)	

Defendants.

The plaintiff, pursuant to her authority under Sections 502(a)(2) and 502(a)(5), 29 U.S.C. §§ 1132(a)(2) and 1132(a)(5), of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq., ("ERISA") has filed a Complaint against Tony Chaney, Sr., Diversified Printing Techniques, Inc., and Diversified Printing Techniques, Inc. Profit Sharing Plan ("Defendants"). Plaintiff and Defendants have agreed to resolve all matters in controversy in this action and accordingly consent to entry of a Judgment and Order by this Court.

A. The plaintiff's Complaint alleges that Defendants breached their fiduciary duties with respect to the Diversified Printing Techniques, Inc. Profit Sharing Plan (the "Plan") by violating provisions of sections 404 and 406 of ERISA, 29 U.S.C. § 1104 and 1106, as set forth in the Complaint.

B. The defendants admit to the jurisdiction of the Court over them and over the subject matter of this action. Defendants admit that this Court has the authority to enforce this Order and that this Court is the most appropriate venue for any enforcement action which may

be required as a result of this Order.

C. Defendants waive any and all claims of whatsoever nature that they have or may have against Plaintiff, or any of her officers, agents, employees, or representatives, arising out of or in connection with the filing, prosecution, and maintenance of this civil action or any other proceeding and investigation incident thereto.

D. This Order represents a complete settlement of all Plaintiff's claims asserted in this action against Defendants. This Order is not binding upon any government agency other than the U.S. Department of Labor and only resolves claims arising out of this action as between the plaintiff and the defendants

E. The plaintiff and the defendants expressly waive Findings of Fact and Conclusions of Law, except as otherwise set forth and addressed herein, and consent to the entry of this Order as a full and complete resolution of all claims and issues which were alleged in this action without trial or adjudication of any issue of fact or law raised in the Complaint.

IT IS, THEREFORE, ORDERED THAT:

1. The Court has jurisdiction over the parties to this Order and the subject matter of this action and is empowered to provide the relief herein.
2. Defendants are permanently enjoined and restrained from violating the provisions of Title I of ERISA.
3. Defendants are permanently enjoined from acting as a fiduciary, trustee, agent, or representative in any capacity to any employee benefit plan, as defined by ERISA.
4. If losses to the Plan are not otherwise restored by March 15, 2011, Tony Chaney, Sr., and Diversified Printing Techniques, Inc., agree that they are jointly and severally

liable to restore losses to the Plan totaling \$90,363.34 (which includes lost interest). Any such losses that must be restored to the Plan in accordance with this Paragraph shall be distributed to Plan participants who participated in the Plan as of the end of Plan Year 2009 (December 31, 2009), by determining each participant's share of total Plan assets as of the end of Plan Year 2009 (December 31, 2009).

5. The payment of \$90,363.34 may be reduced by amounts waived in writing by named fiduciaries to the Plan (Tony Chaney, Sr.) if said fiduciaries knowingly and voluntarily waive their right to receive a portion of this payment. Any such amounts that are waived shall be determined by using the fiduciary's percentage or share of total Plan assets as a participant of the Plan, as of the end of Plan Year 2009 (December 31, 2009). Any such waiver shall supersede the rights and benefits bestowed to the fiduciary/participant by Plan documents and shall include a spousal waiver of said rights and benefits if the fiduciary/participant is married or was married at the relevant times.
6. The parties acknowledge that the plaintiff is required to assess a civil penalty pursuant to ERISA § 502(l), 29 U.S.C. § 1132(l), on the payment of any monies that are restored to the Plan. The penalty under Section 502(l) is equal to 20 percent of the "applicable recovery amount" as that term is defined by ERISA. The parties agree that the "applicable recovery amount" is the amount specified in paragraph 4 above, less any amounts waived as set forth in Paragraph 5 above. Defendants may also seek and obtain a waiver or reduction of a penalty assessed under Section 502(l), pursuant to 29 C.F.R. § 2570.85.
7. This Consent Judgment resolves all claims set forth in Plaintiff's Complaint with the following exceptions:

- a. This Judgment does not adjudicate or otherwise affect any potential civil money penalties that may be assessed under Section 502 of the Act, except as specifically addressed in this Judgment.
- b. This Judgment does not affect or bind any governmental agency other than the United States Department of Labor.
- c. This Court retains jurisdiction for purposes of enforcing compliance with the terms of this Consent Order and Judgment.

8. Each party shall bear its own costs and expenses, including attorneys' fees, arising in connection with any stage of the above-referenced proceeding including but not limited to, attorney's fees which may be available under the Equal Access to Justice Act, as amended.

IT IS SO ORDERED.

Signed: May 18, 2011



Robert J. Conrad, Jr.

Robert J. Conrad, Jr.
Chief United States District Judge



CONSENTED TO BY:

FOR PLAINTIFF:

Office of the Solicitor
U. S. Department of Labor
61 Forsyth Street, S.W.
Room 7T10
Atlanta, GA 30303
(404) 302-5435 (phone)
(404) 302-5438 (fax)

M. PATRICIA SMITH
Solicitor of Labor

STANLEY E. KEEN
Regional Solicitor

ROBERT M. LEWIS, JR.
Counsel

By:s/Angela F. Donaldson
Angela F. Donaldson
Senior Trial Attorney
(404) 302 – 5451 (direct)
Donaldson.Angela@dol.gov

Office of the Solicitor
U. S. Department of Labor
Attorneys for Plaintiff.

**FOR TONY CHANEY, SR., DIVERSIFIED PRINTING TECHNIQUES, INC., AND
DIVERSIFIED PRINTING TECHNIQUES, INC. PROFIT SHARING PLAN:**

By: s/Tony Chaney, Sr.

Dated: April 28, 2011

Address: 9128 Shorewood Place
Belmont, NC 28012
Phone: (704) 825-9453